Uma Sundari a/p Muthusamy v Kanniappan a/l Thiruvengadam

HIGH COURT (MUAR) — ORIGINATING SUMMONS NO 25–43 OF 2005
AHMADI ASNAWI JC
15 MAY 2009

Family Law — Financial obligation — Maintenance — Maintenance order — Application for variation of — Whether application had basis in law — Whether there was material change in petitioner's circumstances — Child past 18 years of age — Whether respondent was under legal obligation to provide for maintenance of child — Law Reform (Marriage and Divorce) Act 1976 ss 76, 80, 83, 84 & 95

The petitioner and respondent, who were married on 28 August 1985, were together for about one and a half years and then started living separate lives as from March 1987. On 6 January 1991, after about five years of separation, the respondent filed a divorce petition. On 24 December 1992, the decree nisi was made absolute. The decree nisi absolute ('the first order') which dissolved the marriage between the petitioner and the respondent, provided, inter alia, that the petitioner would have custody of the child of the marriage, one K Vasanth ('the child'), and that the respondent would have reasonable access to the child; that the respondent would pay maintenance of RM300 per month for the maintenance of the child; and that the petitioner had no claim to the respondent's three properties, namely a piece of land with a house erected thereon in Johor, a piece of land with a house erected thereon in Kota Tinggi and a piece of land in Kota Tinggi (the respondent's three properties). Later on 21 July 1999, the petitioner filed an application against the respondent but this application was settled between the parties when a consent order ('the second order') was recorded by both parties. This second order provided, inter alia, that the respondent would pay RM500 per month as maintenance to the petitioner and RM500 per month as maintenance to the child until the child reached 24 years of age, and if the latter enrolled in any institute of higher learning to further pay half the annual tuition fees for the child. Then when the petitioner filed another application on 5 July 2001, another consent order ('the third order') was recorded by both parties. In the third order dated 6 March 2002, the parties agreed that the respondent would pay to the petitioner a lump sum payment of RM20,000 and pay to the child a lump sum payment of RM10,000 and that these two lump sum payments would constitute a final settlement of the petitioner's claim and that thereafter

the petitioner would have no further claim against the respondent. The third order superceded the first and second orders in respect of the maintenance sum payable to the petitioner. However, on 9 September 2005, the petitioner filed the present application to vary the first, second and third orders. By this application the petitioner now sought and claimed, inter alia, 50% of the respondent's three properties and two other properties (the fourth and fifth properties), which properties the petitioner claimed the respondent did not make full disclosure of; arrears of maintenance for the petitioner and the child; and a monthly maintenance of RM3,000 for the petitioner for life and of RM3,000 for the child until he reached 24 years of age. Although the petitioner had entered into a consent order ('the third order') to accept a lump sum payment from the respondent, she now applied to return the said lump sum payment for a monthly maintenance for herself and the child. The petitioner submitted that she had applied for a variation of the maintenance orders on the grounds that she was now unemployed and incapable of engaging in any sort of employment on account of her ill health. She further submitted that she was unable to pay her medical expenses and the educational expenses of the child.

Held, dismissing the petitioner's application with costs:

(1) In the first order, which was a consent order, the petitioner made no claims over the respondent's three properties. It is trite that the petitioner's instant claim seeking a 50% share in the three properties is governed by the provisions of s 76(1) and (3) of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). The plain and clear wording in these subsections was recently interpreted in *Manokaran a/l Subramaniam v Ranjit Kaur a/p Nata Singh* [2009] 1 MLJ 21 to mean that the court's jurisdiction to order division of the matrimonial assets was 'limited to the time when granting a decree of divorce … and not at a later stage'. The petitioner's claim in the instant case was made subsequent to the decree absolute ie the first order and was therefore too late. It had no basis in law and was therefore dismissed (see paras 6–8).

(2) The respondent's fourth and fifth properties were acquired by the respondent after his separation from the petitioner and more than a year after the divorce petition was filed. In the circumstances the petitioner could not have contributed to the acquisition of those two properties and there was no evidence of such contribution. Therefore the fourth and fifth properties were not matrimonial assets within the meaning of s 76 of the Act. Hence the petitioner's claim for the division of these two properties was also disallowed (see paras 9—11).

(3) When the petitioner consented to the terms of the third order, wherein she agreed to the lump sum payments as full and final settlement of her

claims, she was fully aware of the full terms and effect of that order. In addition she was at all times represented and advised by an experienced solicitor when the third order was formalised. As such the third order was covered by the terms of s 80 of the Act and the petitioner had no further claims for future maintenance. Further the petitioner had to fulfil the requirements of ss 83 and 84 of the Act and prove that there was misrepresentation, mistake of fact or a material change in circumstances, before the court would grant the variation of the maintenance order. However, the petitioner had not pleaded misrepresentation or mistake of fact and on the affidavit evidence she had failed to show that there had been any material change in her circumstances. The fact that she was unemployed was not a new allegation and although she claimed for medical bills which she could not afford to pay it was shown that she had opted to seek treatment in a private specialist centre in Shah Alam instead of the nearby Muar General Hospital which is designated as *hospital pakar*. Further the petitioner failed to disclose her income from the moneylending business that she managed and her claim for monthly expenses amounting to more than RM3,000 a month was also not supported by documentary evidence (see paras 12–16).

(4) Although the respondent had the duty to provide for the child, under s 95 of the Act, this duty ceased upon the child reaching 18 years of age. Since the child in the instant case was well past 18 years of age, the respondent had no legal obligation to provide for his maintenance and sustenance. Further the petitioner had not provided any evidence to show that the child was still pursuing his education in any institute of higher learning. Thus there was no basis for the court to grant such maintenance sums to cover the child's educational needs (see paras 17–19).

(5) The marriage in the instant case was short lived, in that, it lasted for only one and a half years. As such the lump sum payment of RM20,000 paid by the respondent to the petitioner was more than enough to cover the petitioner's needs and for her to adjust to her financial situation post divorce (see para 20).

[Bahasa Malaysia summary

Pempetisyen dan responden, yang berkahwin pada 28 Ogos 1985, telah bersama selama satu tahun setengah dan kemudiannya mula tinggal berasingan daripada Mac 1987. Pada 6 Januari 1991, selepas lima tahun berasingan, responden memfailkan petisyen perceraian. Pada 24 Disember 1992, dekri nisi dijadikan muktamad. Dekri nisi muktamad ('perintah pertama') yang membubarkan perkahwinan di antara pempetisyen dan

responden, mengemukakan, antara lain, bahawa pempetisyen boleh mendapat jagaan anak kepada perkahwinan, K Vasanth ('anak'), dan bahawa responden boleh berjumpa dengan anak tersebut; bahawa responden akan membayar nafkah RM300 sebulan untuk nafkah anak tersebut; dan bahawa pempetisyen tiada tuntutan terhadap ketiga-tiga harta responden, iaitu sebidang tanah dengan rumah yang didirikan di atasnya di Johor, sebidang tanah dengan rumah yang didirikan di atasnya di Kota Tinggi dan sebidang tanah di Kota Tinggi (ketiga-tiga harta responden). Kemudiannya pada 21 Julai 1999, pempetisyen memfailkan satu permohonan terhadap responden tetapi permohonan ini diselesaikan di antara pihak-pihak apabila satu perintah persetujuan ('perintah kedua') direkodkan oleh kedua-dua pihak. Perintah kedua ini mengemukakan, bahawa responden akan membayar RM500 sebulan sebagai nafkah kepada pempetisyen dan RM500 sebulan kepada anak sehingga anak tersebut mencapai umur 24 tahun, dan sekiranya anak tersebut menuntut di sebarang institusi pengajian tinggi maka responden hendaklah membayar separuh daripada yuran tuisyen tahunan untuk anak tersebut. Kemudiannya apabila pempetisyen memfailkan permohonan lain pada 5 Julai 2001, satu lagi perintah persetujuan ('perintah ketiga') direkodkan di antara kedua-dua pihak. Dalam perintah ketiga bertarikh 6 Mac 2002, pihak-pihak bersetuju bahawa responden akan membayar kepada pempetisyen bayaran wang pukal RM20,000 dan membayar kepada anak tersebut bayaran wang pukal RM10,000 dan bahawa kedua-dua bayaran wang pukal ini merupakan penyelesaian muktamad kepada tuntutan pempetisyen dan bahawa kemudiannya pempetisyen tidak mempunyai tuntutan lanjut terhadap responden. Perintah ketiga mengatasi perintah pertama dan kedua berkenaan jumlah nafkah yang perlu dibayar kepada pempetisyen. Walau bagaimanapun, pada 9 September 2005, pempetisyen memfailkan tuntutan ini untuk mengubah perintah pertama, kedua dan ketiga. Melalui permohonan ini pempetisyen memohon dan mendakwa, bahawa, 50% daripada ketiga-tiga harta responden dan dua lagi harta lainnya (harta keempat dan kelima), merupakan harta yang didakwa oleh pempetisyen sebagai harta yang tidak dikemukakan sepenuhnya oleh responden; tunggakan nafkah untuk pempetisyen dan anak; dan nafkah bulanan sebanyak RM3,000 untuk pempetisyen seumur hidup dan RM3,000 untuk anak sehingga dia mencapai usia 24 tahun. Walaupun pempetisyen telah bersetuju dengan perintah persetujuan ('perintah ketiga') untuk menerima bayaran wang pukal daripada responden, sekarang dia memohon untuk memulangkan bayaran wang pukal tersebut untuk nafkah bulanan bagi dirinya dan anaknya. Pempetisyen mengemukakan bahawa dia telah memohon untuk ubahan perintah nafkah atas dasar dia sekarang menganggur dan tidak mampu untuk bekerja disebabkan kesihatannya yang lemah. Dia selanjutnya mengemukakan bahawa dia tidak mampu untuk membayar perbelanjaan perubatannya dan pendidikan untuk anaknya.

Diputuskan, menolak permohonan pempetisyen dengan kos:

(1) Di dalam perintah pertama, yang merupakan perintah persetujuan, pempetisyen tidak membuat sebarang tuntutan terhadap ketiga-tiga harta responden. Adalah nyata bahawa tuntutan pempetisyen menuntut 50% saham dalam ketiga-tiga harta yang tertakluk oleh peruntukan-peruntukan s 76(1) dan (3) Akta Membaharui Undang-Undang (Perkahwinan dan Perceraian) 1976 ('Akta'). Perkataan yang terang dan jelas dalam subseksyen tersebut baru-baru ini diterjemahkan dalam *Manokaran a/l Subramaniam v Ranjit Kaur a/p Nata Singh* [2009] 1 MLJ 21 yang bermaksud bahawa bidang kuasa mahkamah untuk mengarahkan pembahagian aset perkahwinan 'limited to the time when granting a decree of divorce … and not at a later stage'. Tuntutan pempetisyen dalam kes ini dibuat berikutan dekri muktamad iaitu perintah pertama dan oleh itu sudah terlambat. Ia tidak mempunyai asas dalam undang-undang dan oleh itu ditolak (lihat perenggan 6–8).

(2) Harta keempat dan kelima responden diperoleh responden selepas perpisahannya dengan pempetisyen dan lebih daripada setahun selepas petisyen perceraian difailkan. Dalam keadaan ini pempetisyen tidak menyumbang kepada pemerolehan kedua-dua harta tersebut dan tiada keterangan mengenai sumbangan tersebut. Oleh itu harta keempat dan kelima bukan merupakan aset perkahwinan dalam maksud s 76 Akta. Oleh itu tuntutan pempetisyen untuk pembahagian kedua-dua harta tersebut juga tidak dibenarkan (lihat perenggan 9–11).

(3) Apabila pempetisyen mempersetujui terma-terma perintah ketiga, yang mana dia bersetuju untuk bayaran wang pukal sebagai penyelesaian penuh dan muktamad tuntutannya, dia sepenuhnya sedar mengenai terma-terma dan kesan perintah tersebut. Lebih-lebih lagi dia pada setiap masa diwakili dan dinasihati oleh seorang peguam cara berpengalaman apabila perintah ketiga tersebut menjadi rasmi. Oleh itu perintah ketiga tersebut tertakluk oleh terma-terma s 80 Akta dan pempetisyen tidak mempunyai tuntutan lanjut untuk nafkah masa hadapan. Selanjutnya pempetisyen perlu memenuhi keperluan s 83 dan 84 Akta dan membuktikan bahawa terdapat salah nyata, silap fakta atau perubahan material dalam keadaan, sebelum mahkamah dapat memberikan ubahan perintah nafkah. Walau bagaimanapun, pempetisyen tidak memplid salah nyata atau silap fakta dan dia gagal untuk menunjukkan terdapat sebarang perubahan material dalam keadaannya dalam afidavit keterangannya. Fakta bahawa dia menganggur bukanlah dakwaan baru dan walaupun dia memohon untuk bil perubatan yang tak mampu dibayarnya ternyata dia telah mendapat rawatan di pusat pakar persendirian di Shah Alam bukannya Hospital Awam Muar berdekatan yang merupakan sebuah hospital

pakar. Selanjutnya pempetisyen gagal untuk mendedahkan pendapatannya daripada perniagaan meminjamkan wang yang dikendalikannya dan tuntutannya untuk perbelanjaan bulanan lebih daripada RM3,000 sebulan juga tidak disokong oleh keterangan dokumen (lihat perenggan 12–16).

(4) Walaupun responden mempunyai kewajipan untuk memberi nafkah kepada anak, di bawah s 95 Akta kewajipan ini selesai selepas anak tersebut mencecah usia 18 tahun. Memandangkan anak dalam kes ini telah melangkaui usia 18 tahun, responden tidak mempunyai kewajipan dari segi undang-undang untuk menyediakan nafkahnya dan makanan. Selanjutnya pempetisyen tidak mengemukakan sebarang keterangan yang menunjukkan bahawa anak tersebut masih meneruskan pengajiannya di mana-mana institusi pengajian tinggi. Oleh itu tiada asas untuk pihak mahkamah memberikan nafkah tersebut bagi menampung keperluan pendidikan anak tersebut (lihat perenggan 17–19).

(5) Perkahwinan dalam kes ini terlalu singkat, iaitu, ia hanya berlanjutan selama satu tahun setengah. Oleh itu bayaran wang pukal sebanyak RM20,000 yang dibayar oleh responden kepada pempetisyen adalah lebih daripada mencukupi untuk menampung keperluan pempetisyen dan untuk dia menyesuaikan dengan keadaan kewangannya selepas perceraian itu (lihat perenggan 20).]

Notes

For cases on maintenance, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 3319–3345.

Cases referred to

Chew Ling Hang v Aw Ngiong Hwa [1997] 3 MLJ 107; [1997] 4 CLJ 448, CA (refd)

Ching Seng Woah v Lim Shook Lin [1997] 1 MLJ 109, CA (folld)

Karunairajah a/l Rasiah v Punithambigai a/p Poniah [2004] 2 MLJ 401; [2004] 2 CLJ 365, FC (refd)

Manokaran a/l Subramaniam v Ranjid Kaur a/p Nata Singh [2009] 1 MLJ 21, FC (refd)

Minton v Minton [1979] 1 All ER 79, HL (refd)

Sandrasageran Veerapan Raman v Dettarassar Velentine Souvina Marie [1999] 5 CLJ 474, HC (refd)

Legislation referred to

Law Reform (Marriage and Divorce) Act 1976 ss 76(1), (3), 80, 83, 84, 92, 95

R Kandiah (Mohd Latip & Associates) for the appellant.
KH Tan (KH Tan & Co) for the respondent.

Ahmadi Asnawi JC:

[1] Both the petitioner and the respondent were married on 29 August 1985. Subsequently the following events took place:

(1) March 1987 —
matrimony broke down. Both parties led separate lives;

(2) 6 January 1991 —
the respondent filed a Divorce Petition No 33–2 of 1991;

(3) 6 December 1992 —
decree nisi was granted;

(4) 24 December 1992 —
decree nisi was made absolute. The decree nisi ('the *first order*') provides, inter alia:

(a) the dissolution of the marriage between petitioner and respondent;

(b) custody, care and control of an issue of the marriage one K Vasanth a/l T Kanniappan was given to the petitioner with reasonable access to the respondent;

(c) respondent was ordered to pay arrears of maintenance of the said child amounting to RM7,800 being arrears from 1 January 1991 to 31 December 1992 at RM300 per month and thereafter to pay RM300 per month for the maintenance of the said child; and

(d) that the petitioner shall have no claim of the respondent's immovable properties as follows:

(i) a piece of land known as PTD 658, HS(M) 1642 in Mukim Chaah, Johor with a house erected thereon which is subject to a mortgage to Pacific Bank Bhd ('the first property');

(ii) a piece of land together with a single storey terrace house erected thereon held under grant No 10371, Lot 1202, Mukim of Kota Tinggi subject to a mortgage to Deutsche Bank ('the second property'); and

(iii) a piece of land, about 2 E OR 00P held under PTD 667 HS(M) 87 Mukim Ulu Sungai Sedili Besar, Kota Tinggi ('the third property').

(5) 21 July 1999 —
petitioner filed *Saman Pemula* 24(L)–425 Tahun 1999 against the respondent;

(6) 30 September 2000 —
consent order ('the *second order*') relating to *Saman Pemula* 24(L)–425 Tahun 1999 was recorded by both parties. This second order provides, inter alia, that:

(i) the respondent is to pay RM500 per month for the maintenance of the said child, K Vasanth a/l T Kanniappan and also RM500 per month to the petitioner as the petitioner's maintenance; and

(ii) the respondent agrees to continue paying RM500 as maintenance to K Vasanth a/l T Kanniappan until he is 24 years old in the event he enrolled in any institute of higher learning and to pay half of the annual tuition fees.

(7) 5 July 2001 —
the petitioner filed a *Saman Penghutang Penghakiman* against the respondent vide the same *Saman Pemula*.

(8) 6 March 2002 —
a consent order ('the *third order*') was recorded by both parties in respect of the said *Saman Penghutang Penghakiman*. This consent order provides, inter alia, in its original form:

(a) Bahawa responden dikehendaki membayar kepada pempetisyen wang pukal (lump sum payment) sebanyak RM20,000 sebagai penyelesaian muktamad tuntutan pempetisyen untuk segala tuntutan bayaran nafkahnya yang tertunggak sebelum perintah ini dan juga untuk nafkah untuk masa akan datang dan dengan bayaran RM20,000 tersebut pempetisyen tidak mempunyai apa-apa tuntutan lagi terhadap responden.

(b) Bahawa responden dikehendaki membayar kepada anaknya bernama K Vasanth a/l T Kanniapan wang pukal (lump sum payment) sebanyak RM10,000 (melalui pempetisyen) sebagai penyelesaian muktamad tuntutan K Vasanth a/l T Kanniappan untuk segala tuntutan bayaran nafkah yang tertunggak sebelum perintah ini dan juga untuk nafkah untuk masa akan datang dan dengan bayaran RM10,000 tersebut pempetisyen tidak mempunyai apa-apa tuntutan lagi terhadap responden.

It is clear beyond doubt that this third order superceded the first and second order in respect of the maintenance sum payable to the petitioner.

(9) 9 September 2005 — the petitioner filed the present *Usul Pemula* No 24–42 Tahun 2005 against the respondent.

[2] By this *Usul Pemula* the petitioner applied to vary the first order (decree nisi dated 6 December 1992) and claimed 50% of the following immovable properties:

(a) the first property;

(b) the second property;

(c) the third property;

(d) one unit shoplot held under PTD 2114, HS(D) 13311 Mukim Kota Tinggi where a sum of RM42,000 was paid as deposit on 29 April 1992 ('the fourth property'); and

(e) one unit of double storey terrace shoplot/office at Lot 2408, Mukim of Kota Tinggi purchased at sum of RM245,000 and of which the sale and purchase agreement was executed on 11 July 1992 ('the fifth property').

The petitioner claimed that the respondent did not make full disclosure of these fourth and fifth properties at the time the first order was recorded.

[3] The plaintiff is also seeking to vary the second order whereby the respondent is to pay:

(a) the petitioner arrears of maintenance of RM500 per month from 1 October 2000 up to 1 September 2005, amounting to RM29,500;

(b) the petitioner RM3,000 per month as maintenance for life from the date of the new order and all medical expenses incurred by the petitioner thereafter;

(c) K Vasanth a/l T Kanniappan arrears of maintenance at RM500 per month from 1 October 2000 to 1 September 2005, amounting to RM29,500;

(d) K Vasanth a/l T Kanniappan RM3,000 per month as maintenance effective from the date of the new order until he is 24 years and if the said K Vasanth is studying in any institution of higher learning; and

(e) the third item of the second order is to remained.

[4] The petitioner is also seeking to vary the third order to the effect:

(a) the petitioner is to return the lump sum payment of RM20,000 paid to her by the respondent as full and final settlement of the petitioner's claim for maintenance;

(b) the respondent to pay the petitioner RM3,000 per month as monthly maintenance for life effective from date of new order and all her medical expenses as in the variation prayed for to vary the second order enumerated earlier; and

(c) the respondent to pay K Vasanth RM3,000 per month as monthly maintenance until he reaches the age of 24, effective from the date of new order as in the variation prayed for to vary the second order enumerated earlier.

[5] The petitioner now says that she is now unemployed and incapable of engaging in any sort of employment on account of her ill health, having suffered from various kinds of diseases. She could not even afford to pay for her medical expenses and also to support the up keep and educational expenses of her son. She had to rely on the goodwill of her siblings and relatives to survive.

DIVISION OF THE FIRST, SECOND AND THIRD PROPERTIES

[6] It is not disputed that the first order (decree nisi) was drawn up by consent. It is also not disputed that the petitioner made no claims whatsoever over the division of the first, second and third properties at the time the decree nisi was granted and later made absolute. Paragraph 4 of the said order is clear and plain enough.

[7] It is trite that the claims presently made by the petitioner are governed by the provisions of s 76(1) and (3) of the Law Reform (Marriage and Divorce) Act 1976 ('the Act'). The wording in these subsections is equally plain and clear. The Federal Court in *Manokaram a/l Subramaniam v Ranjid Kaur a/p Nata Singh* [2009] 1 MLJ 21 at p 34 thus explained the extent of the court's jurisdiction under the said s 76(1) and (3) as follows — para 40, per Ariffin Zakaria FCJ (as His Lordship then was):

> Reverting to the issue before us, I am of the view that under s 76(1) and (3) of the Act, the court's jurisdiction to order division of matrimonial asset is limited to the time when granting a decree of divorce or judicial separation and not at a later stage. As the present application was made subsequent to the decree absolute, therefore, I hold that the court has no jurisdiction to grant such order.

[8] The petitioner's claim for the said three properties fell on all fours with the said ruling. It came too late in the day. It has no basis in law. Therefore, I have no hesitation in dismissing this part of the petitioner's claim.

DIVISION OF THE FOURTH AND FIFTH PROPERTIES

[9] It is not disputed that the parties were separated and led separate lives from March 1987. They were married on 28 August 1985. Apparently they were together for only about 1½ years. The respondent filed a Divorce Petition No 33–2 of 1992 on 6 January 1991, about five years after their

A separation. It is not disputed that the respondent acquired the fourth property on 29 April 1992 and the fifth property on 11 July 1992, long after their separation and more than a year after the Divorce Petition No 33–2 of 1992 was filed by the respondent.

B **[10]** In such event, the petitioner, by any stretch of the imagination could not have contributed to the acquisition of the said properties and there is no evidence that she had indeed contributed to the acquisition of the said properties in one way or another, apart from claiming that she cared for the issue of the marriage. It is thus not matrimonial assets within the meaning of
C s 76(1) of the Act. The petitioner could not also staked her claim by virtue of s 76(3) of the same as at the material time the two properties were acquired, she had long ago abandoned the matrimonial home. In such event and taking into account that the two properties were acquired after the filing of the divorce proceedings by the respondent, it could not have been the
D intention of the respondent to acquire the said two properties to be the continuing resources of the family or to be utilised for the benefit of both the parties including their child or their family as a whole. As noted by the Court of Appeal in *Ching Seng Woah v Lim Shook Lin* [1997] 1 MLJ 109:

E > During the subsistence of a marriage the expression 'matrimonial assets' refers to the matrimonial home and everything which is put into it by either spouse with the intention that their home and chattels should be a continuing resource for the spouses and their children to be used jointly and severally for the benefit of the family as a whole.

F **[11]** It is thus my ruling that the fourth and fifth properties are not matrimonial assets within the definition of the law. Hence, the petitioner's claim for the division of the said two properties is also disallowed.

G VARIATION OF MAINTENANCE SUM

[12] As reiterated earlier, the third order superceded the second order. In the third order the parties herein agreed that the lump sum payment of
H RM20,000 paid to the petitioner and RM10,000 to K Vasanth a/l T Kanniappan by the respondent shall constitute the final settlement of the petitioner's claim and thereafter the petitioner shall have no further claim against the respondent.

I **[13]** It is not disputed that the petitioner consented to the terms of this third order. It is also not disputed that she was fully aware of what the order means and its full terms and effects thereafter. In exh KT-7, exhibited by the respondent in his affidavit in reply, the petitioner admitted that 'I also understand that by accepting this offer of settlement by Dr Kanniappan, I

can make no further claims against Dr Kanniappan, nor can I enforce the Order of Court dated 30.9.2000'. Additionally the petitioner was at all times represented and advised by an experienced solicitor before the terms of the third order were formalised and entered. In such event I have no difficulty in accepting the submission that s 80 of the Act must operate in favour of the respondent, thereby conferring a good defence to the respondent to any further claims for future maintenance thereafter. The third order is obviously covered by the terms of s 80 of the Act.

[14] The petitioner must also fulfill the requirements of ss 83 and 84 of the Act before the court could grant the variation of the maintenance sum she is now seeking. However no misrepresentation or mistake of fact was pleaded by her. Equally, there is no evidence that either party was under any mistake of fact or had engaged in any sort of misrepresentation before or at the time the third order was entered or recorded. What is left is for the petitioner to show that there has been any material change in the circumstances.

[15] Here, on the affidavit evidence I am satisfied that the petitioner had also failed to show that there has been any material change in the circumstances. Her averment that she is now unemployed is not new. She was dismissed from her employment as a bank employee in 1998 before the third order was entered. She claimed that she could not afford to pay her medical bills but opted to seek treatment at a private specialist centre way up in Shah Alam when Muar General Hospital is also designated as *hospital pakar*.

[16] She also pleaded that the respondent is the majority shareholder in Syarikat KT Steel. But this has been the case before the third order was entered. The respondent has also shown that there has been no change in his earnings for the years 2000 to 2005 as can be seen in the *Notis Taksiran Cukai Pendapatan* exhibited by the respondent. The respondent has also stated that Syarikat KT Steel had ceased operation a long time ago and has since not produced any products. This averment has not been rebutted by the petitioner. The petitioner is now the administrator of her late father's estate. The estate is worth RM310,326.75 while its liabilities amounted to RM11,500. She did not also disclose the number of the beneficiaries equally entitled to the estate though she contended that the estate is to be distributed among its beneficiaries. Equally, the petitioner failed to disclose her income from the money lending business she managed. Her claim for monthly expenses amounting to more than RM3,000 a month is also not supported by documentary evidence.

[17] As regards to K Vasanth, he is now 22 years old. The duty of the respondent to provide for his maintenance is governed by s 92 of the Act. Section 95 provides for the duration to maintain that duty. It ceases upon the

child reaching the age of 18 years irrespective of whether the said child is still pursuing his education beyond that age save for mental or physical disability afflicting the child. Thus the Federal Court in *Karunairajah a/l Rasiah v Punithambigai a/p Poniah* [2004] 2 MLJ 401; [2004] 2 CLJ 365 at held No 2 and 3 expounded the section upon the following terms:

Held:

(2) The words 'disability' in s 95 of the 1976 Act covers only 'physical' and 'mental' disability. It cannot cover financial dependence. There is no legal basis for interpreting the exceptions in s 95 to include financial dependence for the purpose of pursuing tertiary education after the child attains the age of 18. The only basis for such an interpretation that goes against the clear words of the law is on a moral basis. However, moral grounds can never override clear provisions of the law in deciding a case. The function of the judge is to apply the law, whatever his personal view about the law may be.

(3) The Islamic Family Law (Federal Territories) Act 1984 is more advanced than its civil counterpart. Section 79 thereof specifically provides that the court is empowered to make a maintenance order beyond the child's age of 18 'to cover such further period as it thinks reasonable, to enable the child to pursue further or higher education or training'. Such words cannot be interpreted into the existing provisions of s 95 of the 1976 Act. There has to be a specific provision to that effect which is a matter for Parliament to address. This case had to be decided according to the law as it now stood.

[18] As the said K Vasanth a/l T Kanniappan is well past 18 years of age, clearly the law is not on his side. The respondent is no longer under any legal obligation to provide for his maintenance and sustenance.

[19] Even if it is only correct and proper to prolonged the respondent's duty to provide maintenance on grounds that the said K Vasanth a/l T Kanniappan is still pursuing his formal education in any institute of higher learning, the petitioner however failed to provide any evidence to show just that. There is no evidence to show that K Vasanth a/l T Kanniappan is still pursuing his education at any institute of higher learning. The least the petitioner could have done is to show the letter of admission or the receipts of the fees chargeable and paid or K Vasanth's student card. But this was not done. Therefore there is no basis for the court to grant such maintenance sum to cover K Vasanth's educational needs.

[20] The marital bliss lasted only for about 1½ years. In such event, in my view the one lump sum payment of RM20,000 paid by the respondent to the

petitioner is more than enough to cover the petitioner's needs. It should be sufficient for the petitioner to adjust herself to her financial situation post divorce. It augers well with the trend of the clean break principle advocated by our courts in recent years in particular where the marriage is short-lived; see *V Sandrasagaran Veerapan Raman v Dettarassar Velentine Souvina Marie* [1999] 5 CLJ 474; *Chew Ling Hang v Aw Ngiong Hwa* [1997] 3 MLJ 107; [1997] 4 CLJ 448; *Minton v Minton* [1979] 1 All ER 79.

[21] For all the reasons given, the petitioner's application is dismissed with costs.

Petitioner's application dismissed with costs.

Reported by Kohila Nesan